

Archival ethics and indigenous justice: conflict or coexistence?

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MUCH HAS BEEN made in the last two decades of the ‘decolonization’ of institutions, theories and practices in the Western world. Archives are no exception. Broadly speaking, decolonization refers to the undoing of colonialism. Within professions it can refer to the recognition of professional theories and practices as being formed by a colonial mind-set, and continuing to assert and maintain the power and interests of the dominant culture. Māori scholar Linda Tuhiwai Smith (1999, 39) notes in her seminal work, *Decolonizing Methodologies: research and indigenous peoples*, that decolonization ‘does not mean and has not meant a total rejection of all theory or research or Western knowledge’, but instead ‘is about centring our [Indigenous] concerns and world views and then coming to know and understand theory and research from our own perspectives and for our own purposes’. Given the preponderance of records relating to Indigenous peoples currently held in Western archives, it is necessary to consider how archives may perpetuate colonialism, as well as steps which can be taken towards decolonization.

Archivists have long taken pride in the implicit and explicit link between archives and justice, but what happens when justice and long-held archival principles are in direct conflict? Using a case study as a launching point, this chapter examines how archival theories of creation, ownership and authorship – born out of Western colonial thought and philosophy – together with archival values of access and preservation, may actually serve to undermine archivists’ efforts to pursue justice and nurture relationships with historically oppressed peoples.

It contends that the archival community would do well to consider pushing beyond its current practices and Codes of Ethics when making decisions

which impact on Indigenous communities, and that true justice may actually lie in the rejection of some of its own long-held theories and practices in favour of actions which respect Indigenous ways of knowing and perspectives of recordkeeping.

We will begin by setting the stage for the case study by providing contextual information about Indigenous peoples in Canada and about Indigenous knowledge systems.¹ This will be followed by the case study itself, which is an example of an interaction between a non-Indigenous archival institution and Indigenous community members. Finally, we examine how archival ethics and practices were applied and consider tools, namely the United Nations' (2008) *Declaration on the Rights of Indigenous Peoples* and the *Protocols for Native American Archival Materials* (First Archivists Circle, 2007), which could have offered guidance in that situation.

Indigenous peoples in Canada

As the case study occurs in Canada, we will provide a brief description of the present Indigenous population in that country. According to results of the 2011 Canadian National Household Survey, Indigenous peoples make up 4.3% of the Canadian population; approximately 1.4 million out of 33.5 million people (Canada, Statistics Canada, 2013, 4). Indigenous peoples in Canada are diverse, composed of many different languages and cultures; for example, there are over 60 different Indigenous languages in Canada, plus dialects (Canada, Statistics Canada, 2013, 9). The population is also young and growing; 46.2% of the Indigenous population are aged 24 and under, compared with 29.4% of non-Indigenous youth (Canada, Statistics Canada, 2013, 5). The Indigenous population increased by 20.1% between 2006 and 2011, compared with 5.2% for the non-Indigenous population (Canada, Statistics Canada, 2013, 8).

However, Indigenous people in Canada are also facing challenges. For example, the majority of Indigenous languages are considered endangered, with ten languages making up almost 90% of the languages spoken by those with an Indigenous mother tongue (Canada, Statistics Canada, 2012, 2). There are a higher number of children in foster care. Despite being only 7% of all children (i.e. aged 14 and under) in Canada, Indigenous children make up 48.1% of all children in foster care (Canada, Statistics Canada, 2013, 5). Indigenous people also have higher incarceration rates. Indigenous offenders are 23.2% of the federal inmate population, a rate which is ten times higher than for the non-Indigenous population, and there was an increase of 56.2%

in the federal Indigenous inmate population from 2000–1 to 2010–11 (Canada, Office of the Correctional Investigator, 2013.). As well, Indigenous people have lower high school graduation rates than the rest of the Canadian population; 29% of the Indigenous working-age population have less than high school completion, compared with 12% of the non-Indigenous population (Canada, Indigenous and Northern Affairs Canada, 2013).

These issues have resulted from the treatment of Indigenous peoples in Canada. Canada's recent Truth and Reconciliation Commission (2015a, 1) states in the Executive Summary to its Report that:

For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments, ignore Aboriginal rights; terminate the Treaties; and through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities.

Methods of doing this included restricting movement and access to traditional territories, banning ceremonies, preventing hiring of lawyers and fundraising for land claims, and removal of Indigenous children from their families (Canada, Royal Commission on Aboriginal Peoples, 1996; Truth and Reconciliation Commission of Canada, 2015b). And yet, despite such efforts, and the consequences they have had, Indigenous peoples are still here; Indigenous peoples still exist.

In the past 25 years there have been two major national commissions which examined issues related to Indigenous peoples in Canada, the Royal Commission on Aboriginal Peoples (RCAP) and the Truth and Reconciliation Commission (TRC). Both commissions produced multi-volume reports and made numerous recommendations – 444 in the case of RCAP and 94 'Calls to Action' by the TRC. Both documents are rich with data related to Indigenous peoples and issues in Canada; however, few of the RCAP recommendations were implemented and how the TRC's Calls to Action will be handled remains to be seen. In the context of talk of renewing the relationship between Indigenous and non-Indigenous people in Canada, this is also an opportunity to examine the relationship between archivists and Indigenous people.

Indigenous knowledge systems

Indigenous peoples have their own knowledge systems; these can differ from Western ones, but they are no less valid. As scholars Marie Battiste (Mi'kmaq) and James Youngblood Henderson (Chickasaw) note in their book, *Protecting*

Indigenous Knowledge and Heritage: a global challenge (2000, 71–2), this includes having ‘their own laws and procedures for protecting their heritage and for determining when and with whom their heritage can be shared’. These laws and protocols may be complex and ‘vary greatly among different Indigenous peoples’. However, the authors do note some broad similarities between Indigenous legal systems, including that: ‘Indigenous knowledge is ordinarily a communal right and is associated with a family, clan, tribe, or other kinship group’; ‘heritage can never be alienated, surrendered, or sold, except for conditional use’; and ‘there is usually an individual who can best be described as the custodian or caretaker of each song, story, name, medicine, sacred place, and other aspect of people’s heritage’, but this is not the same as the Eurocentric concept of ownership or property rights. Battiste and Henderson (2000, 144) also emphasize that ‘Indigenous knowledge and heritage are sacred gifts and responsibilities that must be honoured and held for the benefit of future generations, rather than commodities or the property of Western nation-states’. Heiltsuk librarian Kim Lawson (2004, 1) also notes that some of the ways Indigenous and non-Indigenous people ‘know the world’ vary greatly, including in terms of how they ‘authenticate and validate information or records’ and ‘the ways that they assess meaning and reliability’. Unfortunately, these knowledge systems have been negatively impacted on by colonization.

The report of the Truth and Reconciliation Commission of Canada (2015a, 1) uses the term ‘cultural genocide’ to refer to the destruction of the structures and practices which allow a group to continue as a group. With regard to record and knowledge keeping, this includes conscious, deliberate and concerted efforts to destroy Indigenous knowledge systems, including how Indigenous people acquire, manage, preserve and access information. Examples of means of disrupting knowledge systems include the potlatch ban, the creation of Indian residential schools and land dispossession.

The feast system or potlatch, an important aspect of society for Northwest Coast nations, was banned by the Canadian government between 1884 and 1951. Potlatches include speeches, stories, songs and histories which are shared according to specific protocols and within a specific juridical context. Guests attending the feast and receiving gifts are being paid to serve as witnesses, not only to the event itself but also to the knowledge shared at it. Anthropologist Antonia Mills (1994, 43), writing about one of these nations, describes the feast as being at the ‘core’ of Wet’suwet’en² society and central to Wetsuwet’en ‘government, law, social structure, and world view’. She continues,

It is in the feast that people are given their titles (and authority over the territory associated with them), their robes, and their crests. This succession is witnessed by the Witsuwit'en and the neighbouring peoples, the Babine, the Nutseni, and the Gitksan. At the same time that the feasts make the jurisdiction of the high chiefs clear to all concerned, they demonstrate that such jurisdiction is based on a deep appreciation of the spiritual qualities of the land, the animals, and the holder of the titles.

Nisga'a also practice the feast system, explained briefly as follows (Boston, Morven and School District No. 92, 1996, 36):

When a chief who is hosting a feast shows one of his crests, he needs to tell the adaawak [oral history] that explains it. The crest and the adaawak go together. Together they prove that the wilp [extended maternal family] owns the property. After the crest has been shown, and the adaawak has been told, one of the guest chiefs must make a speech telling the host that he supports what the chief said. The guest chief agrees the adaawak belongs to the chief who told it. By being at a feast and eating the food provided, guests show their agreement with the host's adaawak. The guests state that the host has the right to the resources of those ankw'ihlwl [the property where the family gets its resources].³

Thus, by banning the potlatch, this system of passing on and verifying information was disrupted.

Another means of disrupting Indigenous knowledge systems was through the Indian residential schools system. For over 150 years, Indigenous children in Canada were removed from their families, cultures and communities and placed in government-funded, church-run residential schools where they were forbidden to speak their language (Truth and Reconciliation Commission of Canada, 2015a and 2015b). Battiste and Henderson (2000, 48) note that Indigenous languages 'provide direct and powerful ways of understanding Indigenous knowledge'. In addition to other abuses, these children were separated from both those family and community members who shared this knowledge and the language which embodied this knowledge.

Dispossession of land also affected knowledge transmission, as land plays an important role in the preservation and passing on of knowledge and information. The land is central to Indigenous identity and knowledge. According to Battiste and Henderson (2000, 9), 'As Indigenous peoples, we invest the ecologies with deep respect, and from them we unfold our structure

of Indigenous life and thought'. Kwakwaka'wakw geographer, Sarah Hunt (2014, 29), also points out the connection between land, knowledge and identity, stating that it is through 'place-based ways of knowing' that 'Indigeneity comes into being'. However, through colonialism, Indigenous peoples were forced to occupy only a tiny part of their territories, limiting access to the land and the information it holds. For example, Cole Harris (2002), in *Making Native Space: colonialism, resistance, and reserves in British Columbia*, outlines how Indigenous people in British Columbia were dispossessed of their land, and the shifting discourses and policies which led to this dispossession. Yet the importance of the land for Indigenous knowledge systems remains. Regarding efforts to reclaim and revive cultures, Anishinaabe scholar Leanne Simpson (2011, 17–18) writes, 'Building diverse, nation-culture-based resurgences mean significantly re-investing in our own ways of being: regenerating our political and intellectual traditions; articulating and living our legal systems; language learning; ceremonial and spiritual pursuits; creating and using our artistic and performance-based traditions'. All of these activities are related to the successful functioning of knowledge systems. Simpson then goes on to describe how being on the land contributes to their enactment, such as how encountering certain aspects of the landscape leads to the sharing of specific knowledge.

This is not to say that Indigenous peoples are concerned only with Indigenous recordkeeping and knowledge systems. As the case study will show, Indigenous people do make use of Western archives. They are also very much captured within this system. For example, due to the paternalistic relationship that the Canadian federal government has over Indigenous people in Canada, individuals and communities have been caught up in its recordkeeping bureaucracy, with records relating to them existing in the fonds and sous-fonds of multiple government departments, not only that of the department of Indigenous and Northern Affairs Canada, and its predecessors (Canada, Library and Archives Canada, 2016). Indigenous people also have information needs that are not shared by the rest of the Canadian population, including conducting land claims research and research to aid cultural restoration. This has led to accessing Western archives, sometimes (or often) far away from traditional territories, and also establishing their own repositories (Lawson, 2004; Jorgensen, 2012). And though Indigenous people may have shifted to a greater use of and production of the written record – or more Western-appearing modes of recordkeeping – this does not mean that Indigenous protocols do not or cannot apply. For example, Indigenous worldviews often involve considering the physical, mental, emotional and

spiritual aspects of things, including records. As David George-Shongo (2011), archivist for the Seneca Nation, speaking about establishing practices for the Seneca Nation's archives, has said, 'We've been doing this for a millennium this way. Who am I to change it?'

Although the case study is situated within a Canadian context, Indigenous people elsewhere faced – and continue to face – similar issues and experiences (e.g. the forced removal of Indigenous children and land dispossession) as a result of colonization, which Canada and other colonizing countries have benefited from (e.g. financial gain from resource extraction). This is our shared history, we are still dealing with the effects and this colonialism still continues. Nor are archives neutral in this. Archives have supported institutions and governments that carried out these activities, and these records exist because Indigenous peoples existed to become the 'subjects' of these records. Smith (1999, 1–2) notes that Indigenous people's 'collective memory of imperialism has been perpetuated through the ways in which knowledge about indigenous peoples was collected, classified and then represented in various ways back to the West, and then, through the eyes of the West, back to those who have been colonized'. Battiste and Henderson (2000, 12) stress that:

Survival for Indigenous peoples is more than a question of physical existence; it is an issue of preserving Indigenous knowledge systems in the face of cognitive imperialism. It is a global issue of maintaining Indigenous worldviews, languages, and environments. It is a matter of sustaining spiritual links with the land.

The following case study illustrates a situation which arose as the Western-oriented archival profession encountered Indigenous perspectives and needs.

Case study

In 1904, the Rev. John Antle, Anglican priest in the Diocese of New Westminster, provisioned his open, five-metre yacht and, together with his nine-year-old son, Victor, set out to sail up the coast of British Columbia (BC), Canada. Feeling that his ministry was meant to be more than within the four walls of a church building, Antle wanted to understand the physical and spiritual needs of the people inhabiting the more remote coastal outposts of BC. What was born of this first trip was what eventually became the Columbia Coast Mission (CCM). Incorporated in 1907, it was comprised of hospital

ships which sailed the coast providing medical, dental and pastoral care to remote logging, mining, fishing and First Nations settlements on both the mainland and island which otherwise would have no access to this kind of care. The CCM would become immensely successful in the eyes of both the Church and local populations, and ended up building several permanent, staffed hospitals in these communities – some of which still exist today.

The records of the CCM are housed in the Archives of the Provincial Synod of British Columbia and Yukon in Vancouver, British Columbia. The fonds consists of administrative records, correspondence, ships' logs, publicity and publications, as well as a significant series of photographs. Several of the CCM doctors, nurses and superintendents were avid amateur photographers. The earliest photos in the fonds even pre-date the Mission itself, beginning in the 1890s. They richly detail the rugged life in early and remote logging, fishing and mining camps as well as Indigenous communities. Of particular note and interest are the photo sub-series pertaining to Indigenous communities along the coast. They document the early, post-contact context of these communities – including dress, ceremony, customs and family life. One of these sub-series is a set of approximately 150 photos of Kingcome Inlet. Kingcome Inlet (Ukwanalis Village) is home to the Dzawada'enuxw First Nation, which is part of the Kwakwaka'wakw Indigenous people. Missionary activity in Kingcome Inlet began as early as the 1890s, and although the Anglican church of St George's, Kingcome was not built until the 1930s, it was typically identified as an 'Anglican community' and the CCM ships stopped in frequently to provide medical aid and spiritual care. It was the only so-called 'native parish' in the Diocese of New Westminster, and was made more well known as the setting for the novel *I Heard the Owl Call My Name*, by Margaret Craven (1967), which was later made into a full-length film.

The request

In the summer of 2011, the archivist for the Anglican Provincial Synod of British Columbia and Yukon was contacted by two young members of the community at Kingcome Inlet. They expressed their interest in viewing the CCM Kingcome Inlet photo sub-series (hereafter 'Kingcome photos'). They came to the archives in person and were given access to the photos. Upon viewing the photos the community members requested that the original photos of the sub-series either be given to the community, or the sub-series be scanned in its entirety and given to the community for its use/control and in order to identify the elders and community members represented in the

images. The community members asserted that the priests and staff had probably not asked permission to take the photos. Even if the priests and staff had asked permission, certainly the argument could be made that, at best, the request may not have been fully understood due to language barriers, and at worst, the permission would have been given under duress, as it was being requested by the very people who were providing medical care – often in life-or-death situations. It could not be considered free consent when the person asking could withhold vital medical care if one said ‘no’. In addition, the community could never have known that the photos would end up in an archives where hundreds of people with or without a relationship to the community could freely browse, copy and use the photos. Another case for the removal of the photographs from the archives was that some depicted sacred objects and ceremonies, and the culture depicted in the photos belonged to the community. Finally, even more personal was the plea that because the photos depicted elders and family members, many of whom were deceased with no other images existing of them, the archives were, in fact, holding the ‘family albums’ of the community.

Denial of request and resulting damage

The Archivist denied the request to remove the photos from the archives, and agreed to the reproduction of only a fraction of the Kingcome photos collection. At the time of the request, the archives had an internal policy that only 20% of any fonds or collection could be copied. The policy had been written many years prior to the request, but had never been reviewed or changed. The archivist informed the community members about the policy and told them that if they wanted reproductions, they would have to choose which 20% of the collection they wanted.

The denial of the request to remove the photos was based on both archival theory and professional Codes of Ethics.⁴ Archival theory is clear that records must be preserved, and that they must be preserved within the context and fonds in which they were created. In fact, this theory of records preservation is so embedded into the DNA of the profession that it is arguable that it goes so far as to be unspoken – and therefore unquestioned. Theories of respect des fonds, original order, provenance all assume and presume preservation. To many archives, the giving up of a portion of a fonds or collection outside of the concepts of repatriation or transfer to another archival repository is almost unthinkable – particularly if destruction is part of the equation. As the policy of copying only 20% of any collection is easily reviewed and changed,

the focus of this case study will hereafter centre on the request by the community to acquire the original set of photos, including physical and intellectual control of the materials, and the possible destruction of some of the originals.

The denial of the request to remove the photos, and particularly the denial of the request to copy the entire series, was met with anger, hurt and distress. It damaged the relationship that the repository and wider Church had had with the community for over 100 years. The community members chose the photos it wanted copied that represented the aforementioned 20% of the series, and the archivist scanned and sent them to the members, but the relational damage was done.

Western archival model and issues

The assumption and presumption of preservation is infused into the Codes of Ethics of the archival profession and often does not allow for the dialogues that interactions fraught with cultural and moral grey areas require. The ICA (International Council on Archives) Code of Ethics uses the modal verbs 'should' and 'must' when referring to the desired and required actions of archivists. The use of modal verbs denotes obligation. When referring to the preservation of records, the much stronger 'must' is used; 'Archivists *must* [emphasis added] perform their duties and functions in accordance with archival principles, with regard to ... the safeguarding, preservation and conservation of archives in their care' (code 2). The language of the SAA (Society of American Archivists) Core Values takes this presumption to another level, in that the active verb tense is used, as in the preservation section of the Core Values Statement: 'Archivists preserve a wide variety of primary sources for the benefit of future generations ... for the benefit of the future more than for the concerns of the past'. Beyond 'should' or 'must', which leave room for the opposite to be possible (though not advisable or ideal) the active tense of the SAA Core Value Statement (Society of American Archivists, n.d.) leaves no room for even the imagining that another decision could be made. Finally, the ACA (Association of Canadian Archivists) Code of Ethics (n.d.) also uses the active voice to state that 'Archivists select, acquire, preserve, and make available for use archival records, ensuring their intellectual integrity and promoting responsible physical custodianship of these records, for the benefit of present users and future generations' (principle 1), that they do so 'according to accepted archival principles and practices', one of which is to 'protect the intellectual and physical integrity of

the records in their care'(b1). And yet, within this same set of applications, the ACA Code states that 'Archivists make every attempt possible to respect the privacy of the individuals who created or are the subjects of records, *especially those who had no voice in the disposition of the records*'(c2, emphasis added). Each of the Codes also references access as a key principle, which follows from preservation. The ACA Code states that the very reason for the acquisition and arrangement and description of archival records is 'in order to facilitate the fullest possible access to and use of their records'(c1).

The problem with Western archival theory and its resulting Codes of Ethics is that it does not respect, nor take into account, the complexities of conversations involving the rights of Indigenous peoples. By presuming preservation as the ultimate goal, dialogue about whether records should be kept despite cultural traditions which would never want them to exist in the first place and therefore require destruction is not only shut down, it is thwarted completely. Those who not only had no voice in the disposition of the records but also had no voice in their creation in the first place are once again silenced by the stricture of the dominant culture. In fact, in the case outlined above, the application of the principles outlined in the Codes – however imperfect the application may have been – actually undermined the relationship with the Indigenous community. It is arguable that the Code of Ethics actually prevented the making of a more ethical decision.

Archival ethics and Indigenous rights

Issues raised by the case study are discussed by both Indigenous people and some members of the archival profession. Archivist Jennifer O'Neal (Confederated Tribes of Grand Ronde) (2015a, 15) writes:

We should perhaps expand our Western theoretical frameworks and open up to the notion that perhaps these theories are not useful for all collections, especially those ethnic communities and other minorities with long histories of oppression and injustices. This expansion will ensure that the profession considers and explores a variety of perspectives and ways of knowing that can positively influence the stewardship of these collections.

Librarian and professor Lorie Roy (Anishinabe) (2015, 199) states that professional values need to be critically challenged in order to:

ensure that the Library and Archives profession no longer reflects western

colonialized views of interactions with Indigenous peoples. A cultural heritage representative must not only learn to advocate for the security and well-being of the cultural material they house; they must also shift their ways of thinking in order to make sure that their use and access place traditional lifeworlds as primary.

As the case study has shown, considering records only in the context of Western archival understandings can be harmful to both communities and the relationship between archives and those communities.

We will now situate the case study within two particular documents, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Protocols for Native American Archival Materials, in order to illustrate additional issues and perspectives to consider when seeking guidance regarding the care of archival materials related to Indigenous peoples.

United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2008) was adopted in 2007 by a vast majority, with the four votes against it coming from Australia, Canada, New Zealand and the United States (Amnesty International, 2015). It bears noting that these are all countries which have contributed significantly to the scholarship on and development of Western archival theory and practice. Canada (2010) would later issue a 'Statement of Support' for the Declaration, although contending that it was but an 'aspirational' document.⁵

The overall purpose of the document, according to the United Nations Permanent Forum on Indigenous Peoples, is to 'emphasize the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations' (United Nations, n.d.). Although the spirit of the entire document (United Nations, 2008) is applicable to this case study, Articles 11 and 31 are most pertinent. Article 11 states that:

- 1 Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes *the right to maintain, protect and develop the past, present and future⁶ manifestations of their cultures* [emphasis added],

such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

- 2 States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

The language of UNDRIP is clear and would apply directly to the series of photos, which are obviously a past manifestation of culture. If one agreed that the priests and staff took the photos without 'free, prior, and informed' consent, it follows that the redress requested by the community members who asked for the original photos was entirely appropriate and should have been taken seriously in a way that it was not. The document goes on to assert in Article 31 that:

- 1 Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions ... They also have the right to maintain, control, protect and develop *their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions* [emphasis added].

Control over intellectual property would certainly apply in the case of the Kingcome photos. Although the Provincial Synod may 'own' the photos in a Western archival understanding of ownership and authorship, the cultural heritage and traditional cultural expressions portrayed within and manifest in the photos would certainly be the intellectual property of the Kingcome community.

In the wake of UNDRIP, Indigenous rights have emerged as a key issue in many areas of the world. Certainly in Canada, the Indian Residential Schools Truth and Reconciliation Commission (TRC) has elevated the uniqueness of human rights in the Indigenous context. At the close of its mandate, the TRC released its summary report together with 94 Calls to Action. A number of the Calls to Action address archives specifically, including number 70 (2015a, 203) which calls for a national review, involving both archivists and Indigenous peoples, that examines archival policies and best practices in order to:

Produce a report with recommendations for full implementation of these

international mechanisms [specifically, the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joint-Orontlicher Principles*]⁷ as a reconciliation framework for Canadian archives.

The United Nations Declaration on the Rights of Indigenous Peoples offers a lens through which interactions between Indigenous peoples and non-Indigenous archival institutions can be assessed; however, this is not the only tool available.

Protocols for Native American archival materials

Guidelines addressing specific situations which non-Indigenous archival institutions might face when dealing with Indigenous records also exist. A particularly relevant example for this case study is the Protocols for Native American Archival Materials. The Protocols (First Archivists Circle, 2007, 1–2) were developed in 2006 by a group of 19 archivists, librarians, curators, historians and anthropologists, 15 of whom were Indigenous. The group met in Flagstaff, Arizona to ‘identify best professional practices for culturally responsive care and use of American Indian archival material held by non-tribal organizations’. The introduction to the document notes that human rights themes ‘such as understanding Native American values and perspectives and providing contexts for Native American archival materials’ emerged repeatedly in discussions. The Protocols built on existing ethical codes and other guidelines in both archival and related professions,⁸ including the Aboriginal and Torres Strait Islander Protocols for Libraries, Archives, and Information Studies, which was developed for use by Australian information professionals in 1995. The Protocols are intended to ‘inspire and foster mutual respect and reciprocity’, with the idea that ‘North American libraries, archives, and American Indian communities will benefit from embracing the power of conversation, cooperation, education, negotiation, and compromise’ (ATSILIRN, 2012).

The Protocols are grouped into a number of categories. These are: ‘Building Relationships of Mutual Respect’, ‘Striving for Balance in Content and Perspectives’, ‘Accessibility and Use’, ‘Culturally Sensitive Materials’, ‘Providing Context’, ‘Native American Intellectual Property Issues’, ‘Copying and Repatriation of Records to Native American Communities’, ‘Native American Research Protocols’, ‘Reciprocal Education and Training, and ‘Awareness of Native American Communities and Issues’. Within sections there are ‘guidelines for action’ both for archives and libraries and

for Native American communities,⁹ and there is a glossary of terms. We will shortly examine some of the specific guidelines through their application to the case study.

In 2007, the Native American Archives Roundtable of the SAA requested that the SAA Council endorse the Protocols; however, the Council asked that membership opinion be solicited first. This resulted in a 140-page report (Boles, George-Shongo and Weideman, 2008) which included comments received, analysis of these comments and draft motions for Council consideration. Of the 39 comments received, 9 endorsed or leaned towards endorsing, 7 were unclear regarding endorsement and 19 opposed or leaned towards opposing (however, this includes 8 responses from non-archivists, mostly archaeologists, who were mainly opposed to the Protocols). Criticism of the Protocols included their breadth and lack of specificity, conflict with current laws and standards (including archival practices and intellectual property laws), privileging of Indigenous perspectives and the practicalities of applying the Protocols. Support for the Protocols tended to focus on their fostering of respect and the need for guidelines and inclusion of Indigenous perspectives when dealing with Indigenous materials.

In 2008, the SAA Council voted against endorsing the Protocols (O'Neal, 2012, 1–4) and instead passed a motion to hold three annual forums related to them. These took place at the SAA Annual Meetings between 2009 and 2011. The first forum served as an opportunity for SAA members to comment further on the Protocols; the second forum focused on projects currently using the Protocols, particularly the Plateau Peoples' Web Portal (PPWP);¹⁰ the third forum looked at the Protocols in the context of UNDRIP and education, as well as next steps for the Protocols. In 2012, a final report was offered to the SAA Council from the Native American *Protocols* Forum Working Group, outlining the development of the Protocols, activities that took place at the 2009–2011 forums and suggesting next steps. These suggestions included reconvening the original authors of the Protocols and possibly other interested individuals to 'make clarifying alterations to the language in the document based on the forum conversations (and other meetings), [adding] an appendix with numerous case studies, and [including] information about UNDRIP', after which the document would be presented to the SAA Standards Committee for potential endorsement as an External Standard.

Most recently, in September 2015, a day-long Archives Summit was held prior to the 2015 International Conference of Indigenous Archives, Libraries, and Museums in Washington, DC. The Protocols for Native American Archival Materials was the subject of this Summit, which included

presentations from original drafters of the Protocols, research related to their use and examples of their application.¹¹ Afternoon breakout group sessions were not recorded, but Jennifer O'Neal (2015b) gave a summary of outcomes at the conference the following day. Next steps proposed included: producing a collection of case studies or an implementation guide illustrating both success and lessons learned as a result of using the Protocols,¹² the use of more inclusive language that represents all of Indigenous North America rather than a primarily US focus and improving collaboration with related professions, such as the museum and library communities, who are also dealing with similar issues related to the care of Indigenous heritage.

Despite the lack of endorsement from SAA, archival institutions have looked to the Protocols for Native American Archival Materials for guidance. As previously noted, the Plateau Peoples' Web Portal makes use of them, and a research study conducted by Elizabeth Joffrion and Natalie Fernandez (2015) received responses from 31 institutions referencing and incorporating the Protocols during their work, 23 of which were non-Indigenous. Other institutions have drawn on the Protocols to draft documents specific to their institution; e.g. the American Philosophical Society (n.d.) has its own Protocols for Treatment of Indigenous Materials. Still other institutions reference the Protocols in the context of their activities; e.g. the Digitization Centre of the University of Victoria Libraries (University of Victoria, n.d.) identifies the Protocols as a document to look to when considering legal and ethical concerns while deciding whether a collection is appropriate for digitization.

It is clear from ongoing discussions and the number of institutions that are looking to the Protocols that this document continues to have relevance. The document is very much applicable to our case study. As such, and to answer one of the issues raised with regard to the Protocols – namely this document would benefit from associated case studies – we briefly offer our case study as an example for how the Protocols could have provided assistance when parties came to this situation with differing points of view at a non-Indigenous archival institution.

As discussed regarding the application of UNDRIP to the case study, the Protocols (First Archivists Circle, 2007) ask that archives consider how materials – the Kingcome photos in this case – came into the possession of the institution, whether this was done ethically and with the understanding and consent of the community, and noting that if this should not be the case, the rights of the Indigenous community must take precedence. The Protocols also address culturally sensitive materials, stating both that 'traditional [i.e.

Indigenous] knowledge systems possess equal integrity and validity' to Western ones, and pointing out, regarding restrictions, that Western archives and libraries, too, can contain restricted, classified and secret materials. Should the community wish to discuss restricting access to the Kingcome photos depicting ceremony, the archives should seriously consider doing so, and in no instances should such restricted material be made publicly available online. While one might argue that, legally (depending on copyright), the archives could publish material that the community considers restricted, the archives is certainly not legally *required* to publish it. In regard to the community's original request to copy the photos, the Protocols specifically state that archives should 'respond cooperatively to requests for copies of records for community use and retention', as 'resources held at a distance may become estranged from the people to whom they are most relevant'. As well, critics of the Protocols who believe they are one-sided should note that the Protocols also encourage Indigenous communities to learn about how archives and libraries manage collections and to recognize that 'libraries and archives can help preserve documentary materials, promote revitalization, and support community goals for the continuation of a positive culture based on a strong cultural heritage'. In the case study, points of view about how archival materials should be handled were put forward by Indigenous community members; however, adherence to perceived archival standards allowed them to be disregarded. The Protocols encourage mutual respect. Although disagreement may occur, this should not be as a result of one group dismissing the other without considering the validity of alternative understandings and perspectives.

Developing specific and detailed instructions for the handling of Indigenous-related archival materials is next to impossible when laws and protocols differ between individual nations. The Protocols draw attention to general similarities between Indigenous peoples for non-Indigenous archival institutions to be aware of; however, their application happens in the context of relationship.

The need for new approaches to archival ethics

As highlighted by the conflict seen in the case study and the examination of the case in light of UNDRIP and the Protocols, there is a need for new approaches to archival ethics. Arguably, given the deliberate attempts to destroy Indigenous culture and knowledge and the present discussion of reconciliation, new approaches are even more relevant and necessary.

Baxter (2012, 10) notes that conversations surrounding the Protocols are about power, with the non-Indigenous archival institutions holding the majority of that power. He writes that although ‘archivists cared for Native American archival materials in their holdings, they made them accessible as they saw fit and described them based on *our* [his emphasis] professional best practices’. Hunt (2014, 30) comments on how this power imbalance can be used to dismiss Indigenous understandings: ‘The potential for Indigenous ontologies to unsettle dominant ontologies can be easily neutralized as a triviality, a case study or a trinket, as powerful institutions work as self-legitimizing systems that uphold broader dynamics of (neo)colonial power’. As well, Roy and Trace (forthcoming, cited in Roy 2015, 200) point out that it is not enough to merely ‘consult’ with Indigenous communities about their cultural heritage; power also needs to be shared. We would also caution, as Roy (2015, 199) does, that while there is a need for ‘continuing discussion on what it means to hold and care for Indigenous cultural heritage’, such discussion should not be limited to those with the resources to travel in order to take part in these discussions or to those with ‘elite’ professional connections.

Despite – and because of – this power imbalance, the inclusion of Indigenous ethics is necessary when examining the management of Indigenous archival materials held by non-Indigenous institutions. Battiste and Henderson (2000, 143–4) discuss how ‘Indigenous peoples’ own languages, knowledge systems, and laws are deeply interconnected with ethical issues’. They write:

Over the past centuries, Eurocentric researchers have examined and dissected Indigenous peoples. Every facet of their existence has been examined, their dead have been dug up by the thousands for medical research, and their ceremonies have been described in the literature. Almost all these efforts have been filtered by Eurocentrism, its professional organizations, and their views of ethics rather than by Indigenous laws and ethics.

Willie Ermine (Cree) (2007, 202) discusses the importance of ‘ethical space’, which is created when those with differing worldviews encounter and engage with one another, writing:

The ethical space offers itself as the theatre for cross-cultural conversation in pursuit of ethically engaging diversity and disperses claims to the human order. The dimension of the dialogue might seem overwhelming because it will involve and encompass issues like language, distinct histories, knowledge traditions,

values, interests, and social, economic and political realities and how these impact and influence an agreement to interact. Initially, it will require a protracted effort to create a level playing field where notions of universality are replaced by concepts such as the equality of nations.

Within the disciplines of psychology, philosophy, sociology and anthropology, the idea of inter-subjectivity is used to describe relational understandings of concepts – where each party brings their subjective understanding to the table to create a shared meaning. It is understood (Sucharov, 2013) that ‘by virtue of our continuous being in the world, we all stand, at any given moment, at the centre of a complex totality of experience that is informed by multiple and interweaving contextual relational systems’. In order to truly honour Indigenous ways of knowing, as well as the rights of Indigenous peoples to ‘maintain, control, protect and develop’ their cultural heritage, there is a desperate need for this kind of inter-subjectivity to inform archival theory and Codes of Ethics.

The importance of relationship

The importance of developing relationships also underlies engaging with these issues. The documents we have discussed are guidelines only, and also not legally enforceable (although, we note, so too are existing Codes of Ethics). As discussed at the start, Indigenous peoples are diverse peoples; there is not a ‘one size fits all’ set of instructions telling archivists exactly how to manage records related to Indigenous peoples. Applying these tools means working together. And working together means building trust. Distrust and fear can exist on both sides: archivists may fear that suddenly all records will be destroyed or restricted, or they may fear making mistakes. There can also be fear on the part of Indigenous people of approaching an intimidating institution, especially one that may hold records that can impact on their lives. However, as Karen Underhill (2006, 137) has written regarding applying the Protocols for Native American Archival Materials:

A strong partnership between a Native American community and a collecting institution involves communication, negotiation, patience, respect, and concurrence. A good meal from time to time is also helpful. Developing an essential trust relationship may take years. ... The potential rewards of cooperation, such as the identification of mutually beneficial solutions to common problems, new opportunities for joint projects and resource sharing,

and community recovery of traditional knowledge, are worth the effort.

Allison Krebs (Anishinabe) (2012, 189) echoes this sentiment, asking:

What will it take to transform the information practices, policies, and procedures around Indigenous information and knowledge held outside Indigenous communities? The short answer is it will take time, respect, and patience from both sides of the divide. It will take open hearts and minds ready to search for win/win solutions located potentially outside the comfort zones of existing practice. It will take conversation, lots of it. It will take compromise, perhaps from those who have never needed to before. It will take a will toward consensus.

Battiste and Henderson (2000, 71–2) also note that sharing knowledge creates a relationship between the givers and receivers of that knowledge. Guidelines and relationship development are both important aspects of addressing encounters and issues such as those which arose in the case study.

Conclusion

Two years after the original request was received by the archivist, she issued a heartfelt apology to the community members and Kwakwaka'wakw people, which was fully and graciously accepted. The archivist digitized the entire series of the Kingcome photos, and a disc of the images was hand-delivered with a letter of apology from the archivist to the community by the bishop of the diocese, who made a trip by boat across the Johnstone Strait in order to make an official episcopal visit. The relationship has mended well. The archivist has been in contact with the community since, and specifically asked the community members' permission and 'blessing' to share the case study with the wider archival community in an effort to raise awareness and prevent further insensitivity of this kind. The community members graciously gave their blessing, and hope that, through sharing this experience, the wider archival profession can come to better understand its cultural and ethical responsibilities.

Notes

- 1 There is discussion amongst Indigenous people, both within and outside of Canada, about the most appropriate terminology to use when referring to

themselves. The 1982 Canadian Constitution (Canada, Department of Justice, 2012, 13) uses the term 'aboriginal', and subdivides this term into Indian (First Nations is also currently commonly used, but 'Indian' has certain legal and policy associations), Inuit and Métis. At present, the federal government department charged with policies related to Aboriginal people in Canada is named 'Indigenous and Northern Affairs Canada'. Multiple Indigenous authors have put together guides explaining terminology meaning, and outlining both preferred and improper terms (Gray, 2011, 161–2; Kessler, 2009, <http://indigenousfoundations.arts.ubc.ca/home/identity/terminology.html>; McCue, n.d., <http://riic.ca/the-guide/on-the-air/lexicon-and-terminology/>; Vowel, 2012, <http://apihtawikosisan.com/2012/01/a-rose-by-any-other-name-is-a-mihkokwaniy/>).

Regarding use of terminology in this paper, in cases where we refer to a specific individual or nation, we identify them by that nation. When we refer to the first inhabitants of the land more broadly, we use the term 'Indigenous'. Although this chapter is centred on a Canadian case study, the issues we raise should be considered by those outside the Canadian archival community. As well, we also draw on international documents; therefore, we use terminology that is as encompassing as possible. The guides produced by Indigenous people noted above are also broadly supportive of the term 'Indigenous', including when it is used to refer to the first peoples of what is now Canada. In cases where we are quoting directly from a source, we do not change the terminology which the author uses. We encourage readers to view the documents cited here in order to gain a greater understanding of the complexities of identification and how this has been impacted by interactions with colonial authorities, and we reiterate that calling people what they call themselves is always preferable.

- 2 The preferred spelling is now Wet'suwet'en, www.wetsuweten.com/, but Witsuwit'en was used at the time of publication.
- 3 Please note that these are very simplified explanations of feast or potlatches, and that there are very specific protocols and procedures to be followed which vary between nations and between types of feasts.
- 4 Namely, the Association of Canadian Archivists (ACA) *Code of Ethics*, <http://archivists.ca/content/code-ethics>, the Society of American Archivists (SAA) *Core Values Statement and Code of Ethics*, <http://www2.archivists.org/statements/saa-core-values-statement-and-code-of-ethics> and the International Council on Archives (ICA) *Code of Ethics*, www.ica.org/5555/reference-documents/ica-code-of-ethics.html.
- 5 Canada, Indigenous and Northern Affairs Canada (2010) *Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples*,

November 12, 2010, www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142. Australia also revised its position in 2009, <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/un-declaration-rights>, New Zealand in 2010 www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/international-human-rights-instruments/drip; and the USA in 2010, www.washingtontimes.com/news/2010/dec/16/obama-adopts-un-manifesto-on-rights-of-indigenous-/?page=all.

- 6 Note the inclusion of the word 'future' in relation to manifestations of culture, thus acknowledging that Indigenous cultures are living cultures and that any changes do not mean that Indigenous peoples – and their rights – cease to exist. Hunt (2014, 30) writes that the 'future of Indigenous rights and political struggles depend on the ability of Indigenous knowledge to retain its active, mobile, relational nature rather than the fixity it is given in colonial law, stuck at the point of contact with colonizers', and Battiste and Henderson (2000, 33) criticize the idea of the 'timelessness of Indigenous culture' which perceives 'any change in material reality [as equating] the demise of Indigenous consciousness'.
- 7 The United Nations Joint-Orontlicher Principles set out remedial measures for states to guard against impunity in the case of past human rights violations and prevention of their reoccurrence. This includes the role of archives in the preservation of and provision of access to information for victims of human rights violations.
- 8 A list of documents consulted is available at the end of the Protocols document (First Archivists Circle, 2007, 23–5).
- 9 A criticism levelled against the Protocols has been that they should include greater 'proactivity' on the part of Native American communities (Bolcer, 2009, 6); however, the Protocols do include guidelines and actions for Indigenous communities to take.
- 10 More information about this project can be found in Kim Christen's (2011) article, 'Opening Archives: respectful repatriation', *American Archivist*, 74 (1), 185–210.
- 11 These presentations were audio recorded and are now available on the Sustainable Heritage Network website: www.sustainableheritagenetwork.org/.
- 12 This addresses a criticism of the Protocols that they were too broad and not specific enough to be very useful. The need for examples of application was also identified as a need of the Aboriginal and Torres Strait Islander Library Information Resource Network's *Protocols for Libraries, Archives and Information Services* upon a review of those protocols ten years after their development (Byrne and Nakata, 2006).

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[Where applicable, we have also identified the nations of Indigenous authors in brackets immediately following their names.]

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